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CWABS, Inc., and CWHEQ, Inc.

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**WESTERN DIVISION**

IN re COUNTRYWIDE FINANCIAL  
CORP. MORTGAGE-BACKED  
SECURITIES LITIGATION CASES

Case No. 11-ML-02265-MRP (MANx)

**SUPPLEMENTAL MEMORANDUM  
IN SUPPORT OF THE  
COUNTRYWIDE DEFENDANTS'  
AMENDED MOTION TO STRIKE  
AND TO DISMISS**

Date: January 26, 2012  
Time: 1:00 p.m.  
Courtroom: 12  
Judge: Hon. Mariana R. Pfaelzer

THRIVENT FINANCIAL FOR  
LUTHERANS, *et al.*,

*Plaintiffs,*

v.

COUNTRYWIDE FINANCIAL  
CORPORATION, *et al.*,

*Defendants.*

Case No. 11-07154-MRP-MAN

1 Pursuant to the Stipulation Regarding Schedule for Motions to Dismiss  
2 Pending Cases (Dkt. No. 138), the Countrywide Defendants respectfully submit this  
3 supplemental memorandum in support of their Amended Motion to Strike and to  
4 Dismiss (the “Motion to Dismiss”), which was filed on August 2, 2011. The Motion  
5 to Dismiss sought that the Complaint (“Compl.”) be dismissed or portions of it be  
6 stricken on the grounds (1) that the Complaint parrots allegations and pleadings  
7 from other lawsuits; (2) that the Complaint fails to allege any actionable  
8 misrepresentations with the particularity required by Rule 9(b); (3) that Plaintiffs’  
9 negligent misrepresentation claim fails because no duty existed between plaintiffs  
10 and the Countrywide Defendants; (4) that the Complaint fails to plead cognizable  
11 economic loss; and (5) that Plaintiffs’ conclusory aiding and abetting claims fail. In  
12 addition to these grounds, the Countrywide Defendants respectfully submit that the  
13 Complaint should be dismissed for the separate and independent reason that it does  
14 not plead facts sufficient to establish either loss causation or justifiable reliance,  
15 both of which are essential elements of Plaintiffs’ claims.

16 **I. PLAINTIFFS FAIL TO ALLEGE FACTS SUFFICIENT TO SHOW**  
17 **LOSS CAUSATION.**

18 In *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336, 346-47 (2005), the  
19 Supreme Court held that a plaintiff suing under federal securities law must allege  
20 facts to establish “loss causation”—that is, a causal link between the alleged  
21 misrepresentation and the decline in the price of the security. A mere decline in  
22 price is insufficient to establish loss causation, because “that lower price may  
23 reflect, not the earlier misrepresentation, but changed economic circumstances,  
24 changed investor expectations, new industry-specific or firm-specific facts,  
25 conditions, or other events, which taken separately or together account for some or  
26 all of that lower price.” *Id.* at 343. Likewise, Minnesota courts have specifically  
27 held that Minnesota state law claims for fraud and negligent misrepresentation, in  
28 the securities context, require that loss causation be both pleaded and proved in the

1 same manner required for federal securities claims under *Dura*. See, e.g., *Hoyt*  
2 *Properties, Inc. v. Prod. Res. Group, L.L.C.*, 736 N.W.2d 313, 318 (Minn. 2007)  
3 (fraudulent misrepresentation); *Hebrink v. Farm Bureau Life Ins. Co.*, 664 N.W.2d  
4 414, 420 (Minn. Ct. App. 2003) (negligent misrepresentation).<sup>1</sup> As the Eighth  
5 Circuit has held under Minnesota law, “[l]oss causation . . . corresponds to the  
6 common law’s requirement of proximate causation.” *Schaaf v. Residential Funding*  
7 *Corp.*, 517 F.3d 544, 548, 550 (8th Cir. 2008) (also holding that the loss causation  
8 standard “does not differ from that employed in a common law fraud case”).<sup>2</sup>

9 For example, in *Schaaf v. Residential Funding Corp.*, 2006 WL 2506974 (D.  
10 Minn. Aug. 29, 2006), *aff’d*, 517 F.3d 544 (8th Cir. 2008), the plaintiff asserted a  
11 common law fraud claim under Minnesota law arising from its purchase of certain  
12 debentures, which the court dismissed for failure to plead loss causation adequately.  
13 The district court in *Schaaf* explained that the fifth element of such a claim requires  
14 proof “that the party suffer[ed] pecuniary damage as a result of [its] reliance” on the  
15 misrepresentation, and that Minnesota “[c]ourts often label the fifth element “loss  
16 causation” in the context of investments.” *Id.* at \*14 (quoting *Spiegel v. Besikof*,  
17 1995 WL 697559, at \*3 (Minn. Ct. App. Nov. 28, 1995)). In other words, “the  
18 aggrieved party must show not only detrimental reliance on the false representation  
19 or omission, but also that the false representation or omission caused the economic  
20 harm—loss causation.” *Id.* (citing *Zacharias v. Polinsky*, 2003 WL 21694591, at \*1  
21 (Minn. Ct. App. July 22, 2003)). The district court in *Schaaf* also held that it “d[id]  
22 not find persuasive Plaintiffs’ argument that *Dura*’s analysis of loss causation

23  
24 <sup>1</sup> Minnesota courts have also treated the elements of fraudulent inducement as  
25 interchangeable with those of fraudulent misrepresentation. See *Countrywide*  
*Defendants’ Mem.* at 10 n.7 (Doc. 77); *accord Johnston v. Hjelman*, 2005 WL  
14941, at \*2 (Minn. Ct. App. Jan. 4, 2005).

26 <sup>2</sup> See also *Lentell v. Merrill Lynch & Co., Inc.*, 396 F.3d 161, 172-73 (2d Cir. 2005)  
27 (comparing loss causation to “the tort-law concept of proximate cause”); *Bastian v.*  
28 *Petren Res. Corp.*, 892 F.2d 680, 683, 685 (7th Cir. 1990) (explaining that the loss  
causation requirement for federal securities claims derives from “the common law’s  
universal requirement that the tort plaintiff prove causation”).

1 should be less stringently applied when considering Plaintiffs’ state law claims.” *Id.*  
2 And the district court’s ruling in *Schaaf* was affirmed on appeal, with the Eighth  
3 Circuit agreeing that “to recover for securities fraud at common law . . . , the  
4 plaintiff must show . . . that the loss was caused by the materialization of the  
5 concealed risk.” 517 F.3d at 550 (citation and bracketing omitted). *Accord*  
6 *Specialized Tours, Inc. v. Hagen*, 392 N.W.2d 520, 537 (Minn. 1986) (“[I]f false  
7 statements are made in connection with the sale of corporate stock, losses due to a  
8 subsequent decline in the market or other factors in no way related to the  
9 representations will not afford any basis for recovery.”) (quoting W. Keeton, et al.,  
10 *Prosser & Keeton on the Law of Torts* § 110, at 767 (5th ed. 1984)).

11 Plaintiffs’ Complaint fails to allege facts sufficient to establish loss causation  
12 for three separate reasons. First, the Complaint fails to plead any pecuniary loss at  
13 all, much less one caused by the claimed misstatements. Instead, it pleads only that  
14 the securities are “no longer marketable at or near the prices Plaintiffs paid for  
15 them.” Countrywide Defendants’ Mem. at 32-34. Absent cognizable loss, there can  
16 be no loss causation. *See NECA-IBEW Health & Welfare Fund v. Goldman Sachs*  
17 *& Co.*, 743 F. Supp. 2d 288, 290-92 (S.D.N.Y. 2010) (dismissing § 11 claims for  
18 failure to plead legally cognizable injury where “[t]he complaint does not allege that  
19 NECA has failed to receive any monthly distributions due under the Certificates”);  
20 *Luminent Mortg. Capital Inc. v. Merrill Lynch & Co.*, 652 F. Supp. 2d 576, 590-92  
21 (E.D. Pa. 2009) (dismissing § 10(b) claims for “failure to allege an economic loss”  
22 where there was “no dispute that Plaintiffs received the payments due under the  
23 Junior Certificates” that they purchased).<sup>3</sup>

24 Second, the Complaint does not identify even one “corrective disclosure” that  
25

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26 <sup>3</sup> A naked assertion of non-marketability, unsupported by any factual allegations of  
27 actual “pecuniary loss,” *Smith v. Brutger Cos.*, 569 N.W.2d 408 (Minn. 1997), is too  
28 conclusory to plead loss causation under Minnesota law and the particularity  
required by Federal Rule 9(b). *See* Countrywide Defendants’ Mem. at 32-34.

1 revealed the supposed “truth” about the alleged misstatements and caused the price  
2 of the securities to decline. Minnesota courts addressing motions to dismiss  
3 Minnesota state law fraud and negligent misrepresentation claims have held that  
4 “[u]nder *Dura*, a plaintiff must allege a corrective disclosure followed by a drop in  
5 the stock price during the time plaintiffs owned the securities.” *In re St. Paul*  
6 *Travelers Sec. Litig. II*, 2007 U.S. Dist. LEXIS 40326, at \*6 (D. Minn. Jun. 1, 2007)  
7 (citations omitted). The Ninth Circuit likewise has held that, under *Dura*, “the  
8 complaint must allege that the defendant’s [security] price fell significantly after the  
9 truth became known.” *Metzler Inv. GMBH v. Corinthian Colleges, Inc.*, 540 F.3d  
10 1049, 1062 (9th Cir. 2008) (citations omitted); *accord Centaur Classic Convertible*  
11 *Arbitrage Fund Ltd. v. Countrywide Fin. Corp.*, --- F. Supp. 2d ---, 2011 WL  
12 2504637, \*3-4 (C.D. Cal. June 21, 2011) (holding that “Plaintiffs must plead that the  
13 value of their investment fell significantly after the truth became known about the  
14 Defendants’ acts or practices” and finding that the complaint in that case had  
15 identified specific alleged corrective disclosures). Because the Complaint here fails  
16 to allege *any* corrective disclosures whereby defendants’ supposed  
17 misrepresentations were revealed to the market, the Complaint fails to allege facts  
18 sufficient to establish loss causation.<sup>4</sup>

19 Finally, the Complaint fails to plead loss causation because, although it  
20 vaguely suggests the prices of the securities have declined over the many years since  
21 the securities were purchased (Compl. ¶ 10), the Complaint does not allege any facts  
22 showing that those price declines occurred promptly following any supposed  
23 disclosures of the alleged misrepresentations. For just this reason, the Eighth Circuit  
24 Court of Appeals in *McAdams v. McCord*, 584 F.3d 1111, 1115 (8th Cir. 2009),

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25  
26 <sup>4</sup> To the extent that Plaintiffs rely on allegations or statements from other legal  
27 proceedings as purported corrective disclosures or evidence of falsity, those  
28 allegations should be stricken for the reasons addressed in the Motion to Dismiss.  
*See Countrywide Defendants’ Mem.* at 6-9.

1 sustained the dismissal of plaintiffs' state law fraud claims, noting that plaintiffs had  
2 failed to allege the value of the security "right before, or right after" the alleged  
3 corrective disclosures.

4 Here, Plaintiffs' failure to plead facts supporting an inference of loss  
5 causation is compounded by the contrary inference this Court may draw—based on  
6 judicially-noticeable facts—that the global financial crisis that started in 2007  
7 caused the alleged decline in the value of Plaintiffs' securities. Numerous courts  
8 have taken judicial notice that the financial crisis caused the mortgage industry to  
9 collapse, housing prices to plummet, and capital markets to freeze. *See, e.g.,*  
10 *Luminent*, 652 F. Supp. 2d at 593-94 (describing the "deterioration in the housing  
11 and mortgage industry that began in 2007").<sup>5</sup> Indeed, this Court recently noted that  
12 this was "a very chaotic period of time in the market and in the economy," and "no  
13 one can contest what that period of time was like." *See* Transcript of Hearing at  
14 56:11-57:23, 66:5-18, *In re Countrywide Fin. Corp. Sec. Litig.*, No. 07-cv-05295  
15 (Feb. 25, 2011) (Countrywide Defendants' Request for Judicial Notice in Support of  
16 Supplemental Memorandum In Support Of The Countrywide Defendants' Amended  
17 Motion To Strike And To Dismiss ("RJN"), at Ex. 1). And Plaintiff Thrivent  
18 Financial for Lutherans itself has publicly acknowledged the "historical market  
19 events" that took place in September and October 2008, and that "[t]he market  
20 turmoil of 2008 and early 2009 have created a significant amount of strain on many  
21 companies in the financial services industry." RJN Ex. 2 (Press Release, Thrivent  
22 Financial for Lutherans, Thrivent Financial Highlights Strength and Community  
23 Outreach at Report to the Community (June 2, 2009); RJN Ex. 3 (Thrivent Financial  
24 2008 Statutory Annual Statement), at Introduction.<sup>6</sup>

25 <sup>5</sup> Courts routinely take judicial notice of downturns in particularly industries or the  
26 economy. *See, e.g., Bastian*, 892 F.2d at 685 (decline in oil and gas industry); *In re*  
27 *Northpoint Commc'ns Group, Inc. Sec. Litig.*, 184 F. Supp. 2d 991, 1004 (N.D. Cal.  
2001) (decline of Internet industry in late 2000).

28 <sup>6</sup> *See also* RJN Ex. 4 (Randy Myers, *One Year Later*, THRIVENT MAGAZINE (Fall  
2009), available at <https://www.thrivent.com/magazine/fall09/moneymatters.html>)



1           Given the weakness of the loss causation allegations in the Complaint, these  
2 judicially-noticeable facts regarding the global financial crisis undercut any causal  
3 connection between the allegations of misstatements in the Complaint and the  
4 decline in the value of Plaintiffs' MBS. In *Luminent*, for example, the court  
5 dismissed the plaintiffs' claims for failure to plead loss causation, explaining that  
6 "the market downturn in the mortgage industry that developed in early- to mid-  
7 2007[] is sufficient to undermine the inference of a nexus between Defendants'  
8 misrepresentations and the performance of the [plaintiff's securities]." 652 F. Supp.  
9 2d at 593. And the Supreme Court itself in *Dura* likewise noted that the causal link  
10 can be broken where, as here, there are "economic circumstances, changed investor  
11 expectations, new industry-specific or firm-specific facts, conditions, or other  
12 events, which taken separately or together account for some or all of that lower  
13 price." *Dura*, 544 U.S. at 343. The Supreme Court of Minnesota likewise has noted  
14 that the causal link can be broken as to Minnesota state law fraud claims where  
15 losses are "due to a subsequent decline in the market or other factors in no way  
16 related to the representations." *Specialized Tours*, 392 N.W.2d at 537 (quoting W.  
17 Keeton, et al., *Prosser & Keeton on the Law of Torts* § 110, at 767 (5th ed. 1984)).  
18 That link has been broken here.

19           The deficiency in Plaintiffs' loss causation allegations is underscored by the  
20 long period of time between Plaintiffs' alleged purchase of the securities (starting in  
21 February 2005) and the date as of which the Plaintiffs complain of price declines  
22 (April 2011, the date the complaint was filed). In *Schaaf*, for example, the plaintiff  
23 purchased certain debentures in November and December of 1997 and the company  
24 filed for bankruptcy in March 2000, just over two years later. Applying Minnesota  
25 state law, the court dismissed the plaintiffs' claim for lack of loss causation,

26 (the financial "markets seized" in 2008; "[o]ne year after the world's financial  
27 markets nearly ground to a halt and sent the already troubled global economy into a  
28 tailspin . . ."; "it was what had become 'business as usual' over the past decade or so  
—easy credit, overspending and some would argue, inadequate government  
regulation of the financial markets—that got us into this mess in the first place").

1 holding:

2 In light of the length of time between the alleged misrepresentations and  
3 given the lack of factual allegations linking Plaintiffs' loss and Defendants'  
4 lender certificate representations and the likelihood of intervening factors  
5 which contributed to the loss, the Court finds that Plaintiffs do not state  
6 claims upon which relief may be granted.

7 *Schaaf*, 2006 WL 2506974 at \*15; *accord Dura*, 544 U.S. at 343 (“[T]he longer the  
8 time between purchase and sale, the more likely that ... other factors caused the  
9 loss.”).

10 Here, as many as six years passed between Plaintiffs' alleged purchase of the  
11 securities and the filing of the Complaint, when Plaintiffs allege the securities were  
12 not “marketable at the prices paid for them by Plaintiffs.” Compl. ¶ 248. Given the  
13 turmoil in the financial markets and the illiquidity in the secondary mortgage market  
14 on which MBS are sold that occurred during this long six-year period, Plaintiffs'  
15 vague pleading fails to allege facts that support an inference of loss causation and  
16 fails to overcome the contrary inference arising from the market turmoil that began  
17 in the third quarter of 2007. Plaintiffs' claims should be dismissed for this reason,  
18 in addition to those identified in its Motion to Dismiss.

19 **II. THE COMPLAINT DOES NOT ALLEGE FACTS SUFFICIENT TO**  
20 **SHOW ACTUAL RELIANCE.**

21 The Complaint must be dismissed also because it does not plead facts  
22 sufficient to show that Plaintiffs actually relied on Countrywide's alleged  
23 misrepresentations when they allegedly purchased the MBS at issue. Reliance is a  
24 “crucial element” of common law fraud and misrepresentation claims under  
25 Minnesota law. *City of Maple Grove v. Marketline Constr. Capital, LLC*, 802  
26 N.W.2d 809, 817 (Minn. Ct. App. 2011). “Unlike a claim under Section 10(b),  
27 [Minnesota state law] misrepresentation claims cannot be premised on a  
28 presumption of reliance under the ‘fraud-on-the-market’ theory.” *In re Digi Int'l*,



1 *Inc. Sec. Litig.*, 6 F. Supp. 2d 1089, 1104 (D. Minn. 1998). Instead, Minnesota state  
2 law claims “require actual reliance,” that is, the plaintiff “must plead and then prove  
3 that it actually relied” on the alleged misrepresentations. *Id.*; *see also Schaaf*, 2006  
4 WL 2506974, at \*17 (granting motion to dismiss because “common law fraud ....  
5 require[s] *actual* reliance”) (emphasis in original).

6 Because all of Plaintiffs’ claims in this case are fraud-based, moreover,  
7 reliance must be pled *with particularity* under Federal Rule 9(b). *See Centaur*  
8 *Classic Convertible Arbitrage Fund Ltd. v. Countrywide Fin. Corp.*, No. 10-CV-  
9 05699, slip op., at \*15 (C.D. Cal. Jan. 20, 2011) (“Rule 9(b) requires that fraud be  
10 pleaded with particularity.”) (RJN Ex. 5); *Digi*, 6 F. Supp. 2d at 1095 (“The  
11 pleading standards set forth in Rule 9(b) apply to all fraud and misrepresentation  
12 claims, including [plaintiff’s] common-law causes of action” for fraud and negligent  
13 misrepresentation.); *Trooien v. Mansour*, 2007 WL 436068, \*3 (D. Minn. Feb. 7,  
14 2007) (“The [Rule 9(b)] particularity requirements similarly apply to negligent  
15 misrepresentation claims.”). The Complaint here fails to do so.

16 More specifically, the Complaint fails to plead facts sufficient to show  
17 reliance for two separate and independent reasons. First, federal courts addressing  
18 Minnesota state law claims have held that, to plead reliance with the requisite  
19 particularity under Rule 9(b), a plaintiff alleging multiple instances of fraudulent  
20 conduct must plead specific facts showing its reliance on *each* allegedly fraudulent  
21 statement or omission. *See ADT Sec. Services, Inc. v. Swenson*, 2008 WL 2828867,  
22 \*4 (D. Minn. 2008) (holding that plaintiffs “must support each distinct reliance  
23 claim with specific allegations concerning [their] receipt of [a] misrepresentation”  
24 and dismissing counterclaims for do so); *see also Lagermeier v. Boston Scientific*  
25 *Corp.*, 2011 WL 4549175, \*6 (D. Minn. Sept. 29, 2011) (observing that “Plaintiff  
26 must tie Defendants’ specific statements to Plaintiffs’ specific actions  
27 in reliance thereon”). The Complaint here fails to do so.

28 Plaintiffs allege that they purchased securities at various times from 2005

1 through 2007 (Complaint ¶ 3 and Exs. 1, 4), but they do not identify on *which*  
2 supposed misrepresentations they relied in making each – *or even any* – purchase.  
3 Instead, the Complaint contains an undifferentiated mass of alleged  
4 misrepresentations (¶¶ 203-25) and then generically asserts that Plaintiffs relied on  
5 those undifferentiated alleged misrepresentations when they made purchases (¶¶  
6 193-201). By contrast, in *Centaur Classic Convertible Arbitrage Fund Ltd.*, --- F.  
7 Supp. 2d ---, 2011 WL 2504637 at \*4 (C.D. Cal. June 21, 2011), this Court held that  
8 another complaint satisfied Rule 9(b) because the plaintiffs there “ha[d] set forth in  
9 the SAC which statements they relied on for *each purchase*.” (emphasis added).  
10 And this Court had dismissed the predecessor complaint in *Centaur* in part because  
11 of its failure to do so. *Centaur Classic Convertible Arbitrage Fund Ltd.*, No. 10-  
12 CV-05699, slip op., at \*15 (RJN Ex. 5). Given that Plaintiffs here too have failed to  
13 do so, they have not pled reliance with the requisite particularity.

14 Plaintiffs’ allegations are also insufficient to show reliance because they  
15 repeatedly assert that Plaintiffs relied on statements or information provided to them  
16 “by Countrywide Securities, Residential Funding Securities, or other brokers.”  
17 Compl. ¶¶ 196-98. To the extent that Plaintiffs relied on information provided by  
18 Residential Funding Securities (a subsidiary of General Motors Corporation, *see*  
19 Compl. ¶ 33), or by unspecified “other brokers,” they did not rely on representations  
20 made by Countrywide. But neither Defendants nor this Court has any way of  
21 knowing what information Plaintiffs claim to have received from which alleged  
22 source. As such, the Complaint fails to allege, with particularity, the supposed  
23 misrepresentations *by Countrywide* on which each of the Plaintiffs allegedly relied  
24 when they allegedly purchased the securities in question. *See, e.g., Lagermeier v.*  
25 *Boston Scientific Corp.*, 2011 WL 2912642 at \*5 (D. Minn. July 19, 2011), *amended*  
26 *by* 2011 WL 4549175 (D. Minn. Sept. 29, 2011) (“Rule 9(b) ‘does not allow a  
27 complaint to merely lump multiple defendants together but require[s] plaintiffs to  
28 differentiate their allegations when suing more than one defendant ... and inform

1 each defendant separately of the allegations surrounding his alleged participation in  
2 the fraud.”); *Block v. Toyota Motor Corp.*, 2010 WL 5422555, \*5 (D. Minn. Dec.  
3 23, 2010) (“Particularity requires that the identity of the person committing fraud be  
4 pled.”); *Daher v. G.D. Searle & Co.* 695 F. Supp. 436, 440 (D. Minn. 1988)  
5 (“[W]here plaintiff has brought fraud claims against more than one defendant, each  
6 defendant is entitled to know the particular allegations of fraud it allegedly  
7 committed. Common circumstances do not excuse a plaintiff from identifying  
8 which party allegedly perpetrated which specific acts of fraud.”). And, because this  
9 case is not a putative class action, that reliance must be pled not only as to each  
10 claimed misstatement, but *as to each plaintiff individually* as well. *Centaur Classic*  
11 *Convertible Arbitrage Fund Ltd.*, No. 10-CV-05699, slip op., at \*15 (“Each Plaintiff  
12 must identify its transactions, the misrepresentations it relied upon when engaging in  
13 the transactions, and the damages it alleges it suffered as a result.”) (RJN Ex. 5).  
14 For these reasons, the Complaint should be dismissed.

15 **CONCLUSION**

16 For the reasons stated herein, as well as the reasons set forth in the  
17 Countrywide Defendants’ initial memorandum in support of their Motion to  
18 Dismiss, any allegations in the Complaint parroted from other lawsuits should be  
19 stricken, and the Complaint should be dismissed in its entirety.

20 Dated: November 4, 2011

**GOODWIN PROCTER LLP**

21 /s/ Brian E. Pastuszenski

22 Brian E. Pastuszenski (*pro hac vice*)  
23 Lloyd Winawer (State Bar No. 157823)  
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24 *Counsel for the Countrywide Defendants*  
25  
26  
27  
28

**PROOF OF SERVICE**

I, Gareth Oania, declare:

I am employed in County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 601 S. Figueroa St., 41st Floor, Los Angeles, CA 90017.

On **November 4, 2011**, I served the following document by placing a true copy thereof in a sealed envelope(s) on the persons listed on the service list:

**COUNTRYWIDE DEFENDANTS' SUPPLEMENTAL MEMORANDUM IN SUPPORT OF AMENDED MOTION TO STRIKE AND TO DISMISS**

- ☐ (MAIL) I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Los Angeles, California.
- ☐ (OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained by Federal Express, an express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed as stated above, with fees for overnight delivery paid or provided for.
- ☐ (MESSENGER SERVICE) I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed and provided them to a professional messenger service for service. A separate Personal Proof of Service provided by the professional messenger service will be filed under separate cover.
- ☐ (FACSIMILE) Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
- ☐ (E-MAIL or ELECTRONIC TRANSMISSION) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

1 ☒ (CM/ECF Electronic Filing) I caused the above document(s) to be  
2 transmitted to the office(s) of the addressee(s) listed above by electronic  
3 mail at the e-mail address(es) set forth above pursuant to  
4 Fed.R.Civ.P.5(d)(1). "A Notice of Electronic Filing (NEF) is generated  
5 automatically by the ECF system upon completion of an electronic filing.  
6 The NEF, when e-mailed to the e-mail address of record in the case, shall  
7 constitute the proof of service as required by Fed.R.Civ.P.5(d)(1). A copy of  
8 the NEF shall be attached to any document served in the traditional manner  
9 upon any party appearing pro se."

10 I declare under penalty of perjury that I am employed in the office of a  
11 member of the bar of this Court at whose direction this service was made and that  
12 the foregoing is true and correct.

13 Executed on **November 4, 2011**, at Los Angeles, California.

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Gareth Oania  
(Type or print name)

  
(Signature)

**SERVICE LIST**

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